

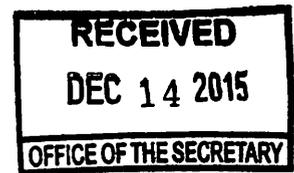
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16509

In the Matter of

EDWARD M. DASPIN, et al.

Respondents.



DIVISION'S MEMORANDUM IN OPPOSITION TO
RESPONDENT DASPIN'S MOTION FOR SUMMARY DISPOSITION

December 11, 2015

The Division of Enforcement (the “Division”) respectfully submits this memorandum in opposition to the motion for summary disposition filed by Respondent Edward M. Daspin. For the reasons set forth below, the Division respectfully submits that Daspin’s motion for summary disposition should be denied.

SUMMARY

Daspin has filed three documents in support of his motion for summary disposition so far (Daspin uses the term “summary judgment”). First, he filed an 18-page letter motion at 8:00 p.m. on Friday, December 4, 2015; then, a 31-page declaration in support of the previous motion, filed at 6:51 p.m. on Sunday, December 6, 2015; and then, a 6-page supplemental declaration in support of his previous motion, filed at 7:44 a.m. on Wednesday, December 9, 2015 (respectively, the “Letter Motion,” the “Declaration,” the “Supplemental Declaration,” and collectively, the “Motion”).¹

The Motion should be denied for at least two important reasons: First, the Motion fails to establish, as required under the Commission’s Rule of Practice 250, that there are no genuine issues of material fact and that Daspin is entitled to summary disposition as a matter of law as to each claim. Daspin completely ignores Rule 250’s requirement that the facts of the pleadings of

¹ Both prior to and subsequent to these filings, Daspin has also sent the Court and the parties numerous improper email submissions attaching isolated documents and making conclusory arguments as to why the OIP should be dismissed against him. The Court has repeatedly ordered Daspin to stop making factual and legal arguments in emails sent to the Court and Mr. Perlman. *See Edward M. Daspin*, Admin. Proc. Rulings Release No. 3202, 2015 SEC LEXIS 4103, at *3 (Oct. 6, 2015) (ordering Daspin to “CEASE sending this Office e-mails unless he is doing so in response to a direct inquiry or request from this Office or is merely providing courtesy copies of documents properly filed with the Office of the Secretary.) Yet Daspin continues to send the Court argumentative emails and lengthy attachments. Just today, despite recently being also reminded not to send such emails to Mr. Perlman, Daspin sent four improper emails to Mr. Perlman and he is likely to increase the pace of improper emails as we get closer to trial. Daspin knows exactly what he is doing, yet he continues to intentionally violate this Court’s clear orders in an attempt to make daily, improper arguments to the Court and Mr. Perlman prior to trial.

the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323. Daspin does not even attempt to address the specific claims against him in the Order Instituting Administrative and Cease-and-Desist Proceedings (the “OIP”) in this case, nor does he even attempt to explain how, taking the facts in the OIP as true, he is entitled to summary disposition. Instead, he makes broad, conclusory arguments based on references to snippets of investigative testimony, isolated documents taken out of context, and excerpts from a letter an associate of Daspin’s sent his lawyer after the OIP was filed seeking to exculpate himself and Daspin from liability. Daspin also makes numerous credibility arguments and refers repeatedly to material facts that are in dispute that prohibit the grant of summary disposition as a matter of law. In summary, Daspin does not even attempt to argue why, taking the facts alleged in the OIP to be true, he is entitled to summary disposition as a matter of law on the specific claims against him. Instead, he seeks to rebut various allegations in the OIP. That, however, is the purpose of trial; it is not a proper basis to seek summary disposition.

Second, Daspin wholly disregards this Court’s Scheduling Order, *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3041, 2015 SEC LEXIS 3348 (Aug. 14, 2015) (hereinafter, the “Scheduling Order”) which required that summary disposition motions be filed by October 19, 2015 and he violates other Commission Rules of Practice by submitting a motion that grossly exceeds the allotted word limits for such motions. Accordingly, Daspin’s legally and procedurally defective motion should be denied in its entirety.

ARGUMENT

I. 'DASPIN'S MOTION FAILS TO MEET THE RULE 250 STANDARD FOR SUMMARY DISPOSITION

Under Commission Rule of Practice 250, summary disposition may be granted “if there is no genuine issue with regard to any material fact” and a party demonstrates that they are entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). Also under Rule 250, the OIP’s factual allegations “shall be taken as true, except as modified by stipulations or admissions made by [the Division], by uncontested affidavits, or by facts officially noted.” *See* Rule 250(a). Daspin’s motion does not even attempt to address each of the specific claims in the OIP. Nor does it contain any discussion as to how, after taking the Division’s factual claims in the OIP as true, he is entitled to summary disposition as a matter of law.² Despite Rule 250(a)’s requirement that the “facts of the pleadings of the party against whom the motion is made shall be taken as true”, Daspin repeatedly asks this Court to resolve material factual disputes in his favor – such as matters involving witness’s credibility. For instance, Daspin’s Letter Motion states “all potential investors knew who I was before investing and those who protest they did not are full of it.” Letter Motion at 5. After stating that his “family had warrants for a [majority] of [WMMA Holding Company]” – or, in other words, held a controlling interest in the companies – Daspin argues that “[investors] Locketts and Heisterkamphs [sic] feigning they did not [know] and or if they knew they would not have invested is a bold faced lie.” Letter Motion at 7. Referring to Daspin’s representations concerning the companies’ funding, or the amount of

² Daspin is charged with participating in the unregistered offerings of securities for which no exemption from registration was available, in violation of Sections 5(a) and 5(c) of the Securities Act of 1933 (“Securities Act”); acting as an unregistered broker in violation of Section 15(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and engaging in fraudulent conduct in violation of Section 17(a) of the Securities Act and Sections 10(b) and 20(b) of the Exchange Act and Rule 10b-5 thereunder.

cash investors were told the companies had in the bank, Daspin's Letter Motion argues "anyone stating they relied upon the cash was a freak in liar and or aider and abetter / disingenuous liar [sic]." *Id.* at 10. Daspin's Declaration argues similar material questions of fact, including issues involving witness credibility. For example, it argues: "[investors] Locket and Heisterkamp [sic] were disingenuous; lying that they believed that WMMA had \$33 million in cash on the balance sheet." Declaration at 27. The Declaration also argues "the Investors have an ECONOMIC MOTIVATION TO PERJURE [sic] THEMSELVES TO ALLEGE THEY WERE FRAUDULENTLY INDUCED TO INVEST." Declaration at 23 (emphasis in original).

Daspin also relies heavily on a document that a former employee, Michael Nwogugu, created after the OIP was filed and which he sent to his lawyer and eventually to the Division. The Division provided this document to Daspin and Agostini pursuant to its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), along with a summary of numerous statements Nwogugu previously made to the Division which contradict his post-filing claims. Daspin notes that Nwogugu has retracted or contested certain statements he previously made to the Division and then argues broadly that: "The Secs allegations in its complaint stemmed from interviews with Mike Nwogugu ... who recently dis-avowed some of the SECs allegations that he allegedly made and Nwogugu has retracted almost every SEC complaint allegation." Letter Motion at 11. Daspin's argument is baseless as it suggests incorrectly that proof of the allegations in the OIP depend upon Nwogugu. To the contrary, the Division has not even put Nwogugu on its witness list and does not intend to call Nwogugu as a witness to prove its case. Moreover, the circumstances under which Nwogugu created this document, a submission to his lawyer seeking to exculpate himself and Daspin from any responsibility for the misrepresentations and omissions in the private placement memorandum ("PPM") after the OIP was filed, make it an

inherently unreliable, hearsay document. Nwogugu's letter to his lawyer also does not fall into any of the categories of uncontested facts set forth in Rule 250(a) that can call into question the facts in the OIP being taken as true. Thus, regardless of their admissibility, relevance and reliability as evidence at trial, Nwogugu's opinions and evolving factual claims are simply not relevant to a summary disposition motion.

Moreover, ironically, Daspin himself attacks some of Nwogugu's claims in the letter. For example, when Nwogugu points to Daspin's role in creating the PPMs, Daspin attacks Nwogugu's credibility: "The court should note that except for the hatred leading to Mr. Nwogugu's using me as his excuse for any WMMA PPMs and or 'appraisal' there has been no one who says I controlled them." Declaration at 5. Daspin also seeks to contradict Nwogugu by pointing to a prior statement in which Nwogugu referenced his own role in creating the PPMs. Letter Motion at 2. Daspin then argues that: "Mr. Nwogugu was responsible for the entire WMMA PPM work product as his employment contract demonstrates and as his emails admit: SEE N129". These factual arguments in which Daspin seeks to undermine the credibility of the very person whose other statements he is asking the Court to adopt are just one example of the many similar flaws in Daspin's motion.

Daspin's Letter Motion further argues that because Daspin's title of "consultant" was used with investors when "going over the organizational chart" that therefore investors were fully informed of Daspin's true role at the companies. This issue, and numerous others raised in Daspin's Motion, however, concern disputed material facts that require adjudication. In fact, as the Commission has explained in its Revision Comment to Rule 250: "Typically, Commission proceedings that reach litigation involve basic disagreement as to material facts. Based on past experience, the circumstances when summary disposition prior to hearing could be appropriately

sought or granted will be comparatively rare.” *Rule 250 Revision Comment*, Rel. No. 35833, 1995 WL 368865, at *68 (June 9, 1995).

Essentially, Daspin seeks to litigate this case on papers, cherry picking isolated “facts” out of context, ignoring the allegations in the OIP that must be taken as true, making baseless assumptions as to what he thinks witnesses will testify to and attacking the credibility of witnesses whose statements he thinks may hurt his case. None of this is an appropriate basis for summary disposition. He has failed to point to even one uncontested fact, far less uncontested facts as to each of the claims against him, sufficient to overcome the allegations in the OIP taken as true. Thus, he is not entitled to summary disposition as a matter of law.

II. DASPIN FLAGRANTLY DISREGARDS THIS COURT’S SCHEDULING ORDER AND OTHER COMMISSION RULES OF PRACTICE

Daspin completely disregards the word limits for summary disposition motions and his Motion is more than seven weeks late under this Court’s Scheduling Order. Rule 250(c) provides that any motion for summary disposition and memorandum of points and authorities (exclusive of any declarations, affidavits, or attachments) shall not exceed 9,800 words. Daspin’s Letter Motion is 9,591 words; his Declaration is 16,746 words, and his Supplemental Declaration is 2,946 words – 29,283 words in total and 19,483 words over the limit. Daspin’s “Declaration” and “Supplemental Declaration” are clearly continuations of his Letter Motion, making factual arguments of the type that should be included in a movant’s memorandum in support of his motion. It is not clear whether Daspin’s denomination of his second and third submissions as “Declarations” was an intentional effort to get around the 9,800 word limit for motion and memoranda. Regardless, these “Declarations” are nothing more than continuations of the arguments contained in his Letter Motion and should count against the word limit for such

motions. The word limit serves the important purpose of requiring a party to focus his arguments and prevent a party from overburdening the Court and opposing parties with excessive filings. Neither the Division nor the Court should be required to respond item by item to such an improper, unduly prolix motion.³

Daspin has also violated this Court's Scheduling Order, which required parties to file any dispositive motions by October 19, 2015. One important reason why the rules of a forum such as scheduling orders should be respected is to permit the parties and the Court to proceed in an orderly and efficient manner and to permit parties to plan their trial preparation in accordance with the schedule set by the Court. At this stage, the parties are less than a month away from trial and have relied on the Scheduling Order to determine when, if at all, any dispositive motions would have been filed and responded to. The Division should not be required to divert resources from its preparation for trial by responding in any more detail to a motion that is more than seven weeks late; that grossly exceeds the permissible word limits set forth in the rules; and that does not even attempt to properly address the legal standard for granting summary disposition.

CONCLUSION

For all the foregoing reasons, the Division respectfully requests that Daspin's motion for summary disposition be denied.

³ The Division will, however, summarize the evidence supporting the claims in the OIP in its prehearing brief due next Friday, December 18, 2015.

Dated: December 11, 2015
New York, New York

Respectfully submitted,



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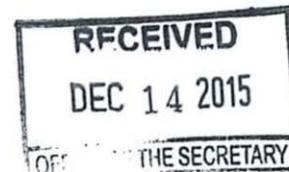


UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
200 VESEY STREET
NEW YORK, NEW YORK 10281

December 11, 2015

Via UPS Overnight and Facsimile (202-772-9324)

Mr. Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549



Re: In the Matter of Edward Daspin et al.
A.P. File No. 3-16509

Dear Mr. Fields:

Enclosed please find the original and three copies of the Division of Enforcement's opposition to Respondent Daspin's Motion to Stay the Proceedings and the original and three copies of the Division of Enforcement's Memorandum in Opposition to Respondent Daspin's Motion for Summary Disposition, both submitted in connection with the above-referenced matter.

A courtesy copy of the letter was emailed to Judge Grimes at alj@sec.gov on the above date.

Respectfully submitted,

Nathaniel I. Kolodny

cc: Judge James E. Grimes (via email)
Edward Daspin (via email)
Luigi Agostini (via email)

Enclosures